

SUBJECT: Interview and Interrogations	NUMBER: 2-20.01
EFFECTIVE DATE:	REVIEW DATE:
NMMLEPSC STANDARDS: ADM.02.02, OPR.10.06	APPROVED: Sheriff

I. POLICY

It is the policy of the Valencia County Sheriff's Department to electronically record custodial interrogations and confessions in order to provide an evidentiary record of statements made by suspects of any crime. Such electronic recordings can help protect both the suspect(s) and interviewing deputies against potential assertions of police coercion or related interrogation misconduct, and may increase the likelihood of - successful prosecution.

II. DEFINITIONS

- A. **Electronic Recording**, An audio or video recording whether using magnetic tape, digital means, or other recording media.
- B. An **interview**, as opposed to an interrogation, may be construed as any conversation with a suspect, witness, victim, or the individual.
- C. An **interrogation**, to paraphrase the Supreme Court, includes direct questioning (or its functional equivalent) about a crime or suspected crime, as well as any words or conduct on behalf of the police that may elicit an incriminating response from the suspect.

Deputies are reminded that an interrogation does not rely solely or exclusively on words: conduct can be the "functional equivalent" of asking questions.

- D. A person is in/under **custody** when a deputy tells him or her that he or she is under arrest. The functional equivalent of being in custody occurs when a reasonable person in the person's place would not feel free to leave, based on the totality of the circumstances.

III. RIGHTS ADMONITION

- A. In order to achieve uniformity in administering *Miranda* warnings, police officers shall be issued cards with the *Miranda* warnings and waiver on them. Before custodial interrogation, deputies shall advise suspects of their rights by reading aloud from the card the following:
 - 1. "You have the right to remain silent."
 - 2. "Anything you say can be used against you in court."
 - 3. "You have the right to talk to a lawyer for advice before we ask you any questions, and to have him present with you during questioning."

4. "If you cannot afford a lawyer, the court will appoint one for you, free of charge, if you wish."
5. "If you wish to answer questions now without a lawyer present, you have the right to stop answering questions at any time."

B. After the warning, in order to secure a waiver, the deputy shall ask and receive affirmative replies to the following questions:

1. "Do you understand each of these rights I have explained to you?"
2. "Having these rights in mind, do you wish to talk to us now?"

C. After the rights have been read, understood, and the person wishes to waive them, the deputy will have the suspect sign the waiver of rights form. Deputies shall interrogate suspects only when they have knowingly and intelligently waived their rights. Deputies shall cease questioning whenever the suspect invokes the right to silence or requests the presence of counsel.

1. After the suspect has been charged, deputies shall not try to elicit incriminating evidence unless the suspect waives the right to counsel.
2. If a suspect, once in custody, requests counsel after being advised of *Miranda* rights, he or she cannot be interrogated again about the crime for which he or she was charged, or other crimes, or by any other deputies unless (1) the counsel is present during the interrogation or (2) the suspect himself initiates the interrogation. Deputies therefore cannot obtain a waiver under these circumstances unless the suspect initiates interrogation. If a suspect refers to counsel but his or her intentions are unclear, deputies may question the suspect further to clarify his or her intentions.
3. If the suspect is hearing impaired or non-English speaking, the interrogating deputy shall notify the on-duty supervisor and shall immediately arrange to obtain an interpreter.

D. Deputies will take care when advising juveniles of their rights to ensure that the rights are understood before obtaining a waiver. Deputies should honor a child's request to speak to a parent or guardian before waiving his or her rights. Whenever possible, the child's parents should be present while the child's rights are explained and the waiver obtained.

E. If a suspect has invoked his or her right to silence, deputies may interrogate the suspect if, after a passage of time, the suspect initiates communication with deputies. Before questioning, however, deputies shall administer *Miranda* warnings and shall obtain a written waiver.

IV. VOLUNTARY CONFESSIONS:

The courts have provided officers with much latitude in interrogating suspects. If a suspect claims that he or she was coerced into confessing, the courts will examine the interrogation according to the totality of the circumstances. If interrogation methods appear to overcome the suspect's will, then the courts will find any resulting confession to be involuntary. If officers use trickery to obtain confessions, they must:

- A. Carefully assess the suspect's background, age, education, mental impairment, and physical condition to determine vulnerability to coercion; and
- B. Coupled with the background characteristics, choose an appropriate mix of interrogation tactics and environmental factors to convince the suspect to confess without overbearing the suspect's will. **Note that *Miranda* warnings would have been given before the interrogation takes place, in most instances.**

V. EXEMPTIONS OR SPECIAL CASES:

- A. *Miranda* warnings do not apply to the following situations which are non-custodial. This list is not all-inclusive:
 1. Brief on-scene questioning;
 2. Identification procedures such as fingerprinting, conducting a line-up, sobriety tests;
 3. Volunteered, spontaneous statements (Once the deputy has heard the suspect express spontaneous incriminating statements, the deputy shall then advise the suspect of *Miranda* rights and obtain a waiver before undertaking additional questions.);
 4. Brief investigative detention or stop/frisk;
 5. Roadside questioning during routine traffic stops, including DWI stops until custodial interrogation begins;
 6. Routine booking questions attendant to arrest;
 7. Questioning by private persons.
- B. Public safety exception:

When a deputy urgently needs information from a suspect because lives are in imminent danger, deputies may delay giving *Miranda* warnings until the deputies have received information sufficient to dispel the emergency. **Deputies are advised that a genuine, life-threatening emergency must exist.**

VI. DOCUMENTATION REQUIREMENTS:

- A. Deputies shall document the circumstances surrounding the conduct of interrogations and the recording of confessions. Required information includes but is not limited to:
 - 1. location, date, time, duration of the interrogation;
 - 2. identities of the deputies present;
 - 3. *Miranda* warnings given, the suspect's responses, and any waivers provided; and
 - 4. the nature and duration of any breaks or lapses during the interrogation and the reasons for them.

- B. Video or audio tape recordings shall be treated as evidence and handled accordingly. Before the tapes are stored as evidence, a duplicate shall be made and likewise treated as evidence, the fact of it being a duplicate should be clearly noted on all paperwork.

VII. PROCEDURES

A. General Requirements

- 1. Deputies shall record all custodial interrogations in accordance with NMSA 29-1-16.
- 2. Deputies are not required to record noncustodial interviews with suspects, witnesses, or victims during the initial interview phase of an investigation but may do so where deemed necessary, in accordance with law and departmental policy.
- 3. Electronic recording of juveniles shall be conducted if at the time the crime was committed, the juvenile suspect could be charged with a crime as an adult.
- 4. If electronic recordings cannot be conducted due to equipment failure, lack of suspect cooperation, or for other reasons deemed pertinent to successful interrogation by the case manager, the basis for such occurrences shall be documented. This includes but is not limited to spontaneous declarations or other statements not elicited by police questioning.
- 5. Transporting deputies need not refrain from questioning a suspect who has indicated a willingness to talk either at the scene or en route to the place of detention. However, deputies shall not purposefully engage in custodial interrogations involving crimes in order to avoid this department's requirement for electronic recording.

B. Recording Protocol

- 1. Suspects do not have to be informed that they are being recorded unless required by law.

2. The office of the prosecutor, the investigative case manager, or other authorized department official may direct that any interview or interrogation be recorded that do not meet the criteria for recording as defined by departmental policy.
3. Interrogations and confessions shall be recorded in their entirety starting with the interrogator's entrance into the interview room and concluding upon departure of the interrogator and suspect.
4. When commencing the recording, the primary interrogator shall ensure that voice identification is made of officers, suspect, and any others present, and that the date, time, and location of the interrogation is verbally recorded. When beginning a new recording, the interviewer shall announce the date and time that the interrogation is being resumed.
5. Each recording shall include the following:
 - a) Declaration of the date and time the recording began.
 - b) Administration of *Miranda* warnings as required.
 - c) Notation of the time the interrogation ends.
6. Any lapse in the recording for comfort breaks or other reasons shall be accounted for on the recording. As an alternative, during a short recess, the recording may continue without interruption.
7. Recording attorney-client conversations is prohibited where an expectation of privacy would reasonably exist.
8. Recordings of interviews are considered evidence and shall be handled as such. All recordings shall be governed by this department's policy and procedures for the handling and preservation of evidence.
9. Recordings shall be retained by the department in secure storage for a period of time as defined by state law or the office of the prosecutor.

C. Interview and interrogation room requirements

1. Suspects will be under constant monitoring while in the interview/interrogation room. Monitoring may be in person or video camera.
2. There should be two deputies present during the interview/interrogation.
3. Deputies are required to ensure that suspects are thoroughly searched before the interview/interrogation. Even if the suspect has already been searched by another deputy the interviewing deputy may conduct another search.

4. Deputies shall search the interview/interrogation room prior to the suspect being placed in the room.
5. Deputies are permitted to bring their firearms into the interview/interrogation room, provided the firearms are secured on the deputies person. Firearms will not be displayed to the suspect except in certain situations that require that firearms be shown to a suspect for the purposes of identification. Firearms will not be shown as a means to gain compliance or confessions.
6. Access to the interview/interrogation room is only by personnel within the Detective Division. All Investigators within the Valencia County Sheriff's Department Detective Division and their supervisors will have access (keys) to the interview/interrogation room. Other Personnel from the Department that wish to utilize the interview/interrogation room shall contact the on call detective to gain access.
7. All detectives will receive training on the use and the policy of the interview/interrogation room. When detectives allow access for other personnel to the interview/interrogation room, that detective will be responsible for ensuring that proper policy is followed.